IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 33 of 1985

MOHAN LAL
V/S
M/S. PRAKASH CHITRA

Mr. NS ACHARYA, for the appellant / petitioner

Mr. SC MALOO, for the respondent

Date of Order : 14.9.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This appeal has been filed by the plaintiff, against the judgment and decree of the learned District Judge, Bikaner dated 15.12.1984, dismissing the plaintiff's suit, though considering the question of standard rent, and coming to the conclusion, that if the issue No.1 would have been decided in favour of the plaintiff, he would have been entitled to standard rent @ Rs. 511.50 Paisa per month, from the date of decree.

The facts of the case are, that the plaintiff filed a suit, alleging inter-alia, that on Dauji Road, Bikaner, there is a Mohaton Ki Bagichi of Ganeshji, wherein a big chunk of land was let out to Girdhardas Mundra, vide registered lease dated 28.8.47, for a period of 50 years, from out of that, a portion measuring 3993 sq. Gaj was let out to Raman Lal, the partner of the defendant firm, at a

monthly rent of Rs.561/-. However, the rent was paid upto March 1958, and thereafter it has not been paid, according to the plaintiff, the defendant wanted to have a lease deed for longer period, but the lease deed could not be registered, thus tenancy is a monthly one. According to the plaintiff, said Girdhardas assigned all his right, title and interest to the plaintiff vide registered assignment deed dated 14.4.75. It was alleged, that Dilip Kumar, the partner of the defendant firm, agreed to pay all arrears of rent after 1.4.58, @ Rs.561/- per month, and also gave a right of re-entry to the plaintiff. The plaintiff terminated the tenancy vide registered notice dated 10.3.76. It was pleaded that the defendant is defaulter in payment of rent, the defendant has sublet part of the premises, for the purpose of canteen and the cycle stand, the defendant has renounced the title of the plaintiff. Thus, the defendant is not entitled to the protection of the Rent Control law. It was also alleged, that the plaintiff is entitled to rent for a period of 216 months, from 1.4.58 to 21.3.76, but has claimed decree for the rent, which is within limitation, being Rs.20,196/-. It was then pleaded, that the basic rent of the premises is Rs.561/-, and accordingly a standard rent, to the tune of Rs.1402.50 Paisa be determined, with effect from the date of filing of the suit. With this, decree for eviction has also been prayed.

The defendant contested the suit. The defendant had admitted, that there was a lease in favour of Girdhardas, from whom the defendant took the premises on lease, through a lease deed. The extent of land taken on lease was disputed, and some more land was claimed. Then regarding rate of rent, it was pleaded that the rate of monthly rent was not Rs.561/- per month, but was Rs.341/- per month, the assignment of rights by Girdhardas in favour of the plaintiff were denied for want of knowledge, as no intimation in that regard has been received by the defendant. It was contended, that no agreement was entered into between the plaintiff and Dilip Kumar, nor any notice determining the tenancy was received. The grounds of eviction were denied. It was also pleaded, that the defendant is regularly paying rent to Girdhardas, and thus the defendant is not a defaulter. It was also pleaded, that plaintiff is not entitled to have the rent enhanced, thus, is not entitled to any relief. Then in additional pleas, it was pleaded that during the period of emergency, the Municipality created a trust of Ganesh Temple, and received rent from all the tenants, in which process, two cheques of Rs.10,000/- were also received from the defendant. Regarding extent of land, it was pleaded, that towards east, the land is enclosed by stone slabs, and to that extent, the land is on rent. It was also contended that Girdhardas had no right to assign, and therefore, the plaintiff has no right to maintain the present suit. An

objection was also taken about Municipality, Bikaner and Ganesh Temple Trust, to be necessary parties.

The learned trial Court framed as many as 13 issues. Issue No.1 was, as to whether Girdhardas made a registered assignment deed in favour of the plaintiff on 14.4.75. Then issue No.2 was, as to whether Dilip Kumar, the partner of the defendant firm, agreed with the plaintiff, after assignment, as alleged in para-4 of the plaint. Issue No.3 was on the question, as to whether tenancy has been determined, while issue No.4 is as to whether the defendant is, and was, ready and willing to pay the rent to the landlord, @ Rs.561/-. Then issue No.5 related to question of default. Then issue No.6 related to the grounds of eviction, and entitlement of the defendant to protection of the Act. Then issue No.7 related to plaintiff's entitlement to decree for Rs.20,196/-. Issue No.8 related to the question of extent of standard rent. Then issue No.9 was, as to from which date, the standard rent should be determined, issue No.10 was, as to whether the defendant has paid Rs.10,000/- against rent as pleaded in para-17 of the written-statement, and its effect. Then issue no.11 was, as to whether Girdhardas was not entitled to assign his rights, and therefore, plaintiff has no right to maintain the suit, issue No.12 related to the question of Municipality and the Trust being necessary party. Obviously issue No.13 related to the relief. Out of this,

Issues No.4, 10, 11 and 12 were not pressed.

After completing the trial, the learned trial Court decided issue No.1 against the plaintiff, by embarking much on the factum of proof of assignment. The learned trial Court held, that the deed of assignment Ex.2 cannot be said to have been voluntarily executed by Girdhardas, it is without consideration, and then, according to rent note, Ex.P-7, Ganesh Temple, through its authorised person Karnidan Singh, P.W.7, had a right of re-entry in the event of default in payment of rent for one year, still it has not been given any notice, and Karnidan Singh has not deposed about payment of rent by the plaintiff. With this, it was observed, that the plaintiff not has appeared in the witness-box, and his Power of Attorney has not said in this regard. Thus, the issue was decided against the plaintiff. Then deciding issue No.2, it was found, that the theory of Dilip Kumar meeting with the plaintiff, and agreeing, is not established. The statement of P.W.5, 7 and 8 were found to be unreliable, and thus, this issue was decided against the plaintiff. Then issue No.3 was decided by observing, that notice was not necessary, as in cases where Rent Control Act applies, the tenancy is determined on coming into existence the grounds. Then deciding issue No.5 and 6, it was held, that the defendant is not defaulter. Then regarding subletting it was found, that canteen and cycle stand are essential

amenities of a cinema hall, and the person operating them fall within the category of licensee, and it is established that the defendant has not given any exclusive possession of any part, to anyone. Thus subletting is not established. Then regarding denial of title of the landlord also, it was found, that it is not established, as to which partner of the defendant renounced it, and when. Regarding statement of Manakchand, it was found, that the evidence is controverted by the evidence of defendant Balabaksh and D.W.3, Dilip Kumar, rather Ex.D.W.3/2 shows, that the defendant is regularly depositing the rent in the Court. Thus, it does not establish, that the defendant has denied the title of the plaintiff. Thus, the two issues were decided against the plaintiff. Then coming to issue No.7, it was considered, that the plaintiff has not appeared in the witness-box, and is Power of Attorney has deposed to be not remembering, as to how much rent is in arrears, and outstanding. Then the plaintiff has not produced any account, as against which Dilip Kumar has clearly deposed it to be wrong that defendants have not paid any rent for last 18 years, rather they are regularly paying rent, and has deposed, that in the year 1976 and 1979, there was a flood in Ajmer, submerging houses to the extent of about 8 fits, wherein the record was washed away, and the plaintiff wants to take advantage thereof. Thus, it was found, that the plaintiff has failed to establish any rent to be outstanding. Coming to issue No.8 and 9, it was observed,

that the lease deed is not registered, and therefore, any stipulation contained therein, cannot be looked into. Then it was observed, that in the rent note, the rent was stipulated to be Rs.561/-, but then it was stipulated that only Rs.150/- will be received till commissioning of Cinema or till 31st March, 1951, whichever is earlier. Thus, monthly rent was Rs.150/- only. Then it was noticed, that after 1.3.51 when Ramanlal did not pay rent, Girdhardas filed a suit, being Suit No.5/57, from judgment whereof, it transpired, that the suit was got decreed collusively by Girdhardas joining hands with Ramanlal, but no rent was paid, then the matter was compromised, in which sequence, Balabaksh wrote a letter on 6.8.57, being Ex.P-1, proposing, that if the tenure of lease is increased from 22 years to 26 years, he will pay rent from 1.3.51 to 31.7.57, and otherwise @ Rs.341/- per month, which proposal was accepted by the plaintiff on 7.8.57. Thus a tenancy @ Rs.341/- per month came into existence. Then it has been further observed, that the agreement resulting from Ex.1 and 2 was also required to be compulsorily registered, but has not been registered, therefore, the default stipulation, contained therein, about monthly rent being Rs.561/-, in the event of default of four months, cannot be looked into, and that the rent upto 31.7.57 was paid @ Rs.341/- per month upto 1958. Thus, it was found, that basic rent of the premises was Rs.341/- per month, and in view of the provisions of Section 10(2)(ii), this rent can

be increased by 50% and thus, it was found, that the standard rent of the premises would be 511.50 Paisa. Then regarding date of commencement of this standard rent, it was considered, that looking to the circumstances of the case, the plaintiff is entitled to have the standard rent fixed from the date of decree. However, in view of the decision of issue No.1, 8 and 9, the suit was dismissed.

Arguing the appeal, it was contended, that it is clearly established on record, that the lease hold rights of Girdhardas were assignable, and they have been assigned to the plaintiff, by registered assignment deed dated 14.4.75, being Ex.P-2. It was also contended, that a look at the statement of Karnidan Singh P.W.7, does show, that he is a consenting party to the assignment, and has proved the signatures of Girdhardas. This Karnidan Singh is the key person on the side of the lessor of Girdhardas, and thus, there was no dispute between the principal lessor Girdhardas and plaintiff, in that view of the matter, the defendant, who is admittedly tenant, had no occasion to raise any controversy in this regard, apart from the fact that even from the statements of D.W.1 and 3, Balabaksh and Dilip Kumar, it is clear that they had not disputed the plaintiff or Girdhardas to be the landlord and therefore the issue No.1 was required to be decided in favour of the plaintiff-appellant. Then the learned counsel assailing finding on issue No.2 also contended, that from a bare

reading of the statement of P.W.5, 7 and 8 and plaintiff, it is more than clear, that after assignment, understanding was arrived at between plaintiff and Dilip Kumar, agreeing to pay rent @ Rs.561/- per month to the plaintiff. It was then contended, that the learned trial Court was in error in negativing the ground of subletting, and denial of title. Then it was also contended, that the learned trial Court was in error in deciding issue No.7, inasmuch as, it is not established, that rent was paid to the plaintiff, or even to Girdhardas, for that matter, rather it is admitted position on the side of the defendants, that the rent was neither paid to the trust nor the plaintiff. Then strongly assailing the finding on issue No.8 and 9, it was contended, that the learned trial Court has applied double standards, inasmuch as, the particular document has been held to be inadmissible for want of registration, still some part of that document, has been relied upon, while other part has been ignored, which is wholly wrong, inasmuch as, in Ex.1 and 2, if the stipulation of monthly rent of Rs.341/- was to be read, then the other stipulation was also required to be read, that if rent for four months is not paid, this concession will stand withdrawn. This, coupled with the fact, that in the lease deed dated 4.8.1950, the monthly rent was stipulated to be Rs.561/-, and a rebate was given only upto March 1951, or till commencement of the theater, whichever is earlier, there was no justification for holding the basic rent to be

Rs.341/- per month. According to the learned counsel, Ex.1 admittedly bears the signature of the defendant, and Ex.6 is also an admitted document. Then vide Ex.3, the plaintiff had clearly withdrawn the concession given vide Ex.1. This Ex.3 was reacted upon by the defendant vide Ex.6, and therein it was given out, firstly, that he is not even bound to pay Rs.341/- per month, being excessive, and proposed to have the fair rent settled by competent authority shortly, secondly, it was given out that as the partner, Nemichand refused to sign the proposal (Ex.1), there does not exist any valid agreement, thirdly, that the proposal made (Ex.1) was imperfect, and Girdhardas cannot claim any right thereunder. Obviously meaning thereby, that the defendant meant to go back upon Ex.1. Even if that be so, then the natural consequence is, that the stipulation in the lease deed dated 4.8.50, did come into force, whereunder the rent being Rs.561/-, as the rebate given upto 31st march 1951, or upto commencement of the theater, whichever is earlier, has already expired. Thus, the basic rent was required to be considered as Rs.561/-. Then it was also contended, that the learned trial Court was in error in applying the provisions of Section 10(ii), rather the present case is covered by Section 6. The prayer made in the suit was for determination of standard rent, which is a matter covered by provisions of Section 6, and Section 10 has no application whatever, and since according to Section 6, the standard rent is to be two and a half times, the

basic rent, the learned trial Court was in error in increasing it by 50% only. Likewise, it was also contended, that the standard rent should have been determined to be effective from the date of institution of the suit. Reliance in this regard was placed on the language of proviso to Section 6(5).

Learned counsel for the respondent, on the other hand, supported the impugned judgment.

However, during course of argument, the contention of learned counsel for the appellant on the question of assignment in favour of the plaintiff by Girdhardas was not very seriously disputed, rightly realizing the situation, that all said and done, the defendant is admittedly a tenant, and in view of the statement of P.W.7, read with Ex.2, and in view of the statements of D.W. 1 and 3 themselves, and in view of the fact, that there is no dispute between the principal landlord, the defendant's landlord, and the plaintiff. However, other findings of the learned trial Court were strongly supported by the learned counsel for the respondent. It was contended that vide Ex.11, the plaintiff had clearly received rent for the period 1.8.57 to 31.12.57, the alleged default stipulation, contained in para-8 of Ex.1 automatically stood waived, and therefore also, Ex.3 is of no consequence. It was also contended,

that vide lease deed dated 4.8.50, the monthly rent agreed was only Rs.150/-, and it was only a way of describing it as rent being Rs.561/-, with a deduction of Rs.411/-, but then rent was never paid @ Rs.561/-, and at best, the rent paid was at Rs.341/- per month, therefore, the learned trial Court was right in taking the basic rent to be Rs.341/-. It was also submitted, that from bare reading of the provisions of Section 10, it is clear, that the provision has been rightly applied by the learned trial Court. It was then submitted, that a look at the plaintiff's evidence shows, that even according to the plaintiff, the alleged understanding between the plaintiff and Dilip, in presence of Karnidan Singh, was after April 1975, and there is no pleading or evidence to show, that after Ex.11 and till alleged dialog with Dilip Kumar, the rent was ever paid @ Rs.561/-. It was then contended, that it is a different story, that from a look at the statement of P.W.9, who has appeared as plaintiff, it is clear, that the dialog was with plaintiff himself, i.e. between Mohan Lal and Dilip Kumar, in the room situated on the up-stair of the Prakash Chitra theater, and that nobody else was there. Thus, the whole story as propounded by P.W.5, 7 and 8 falls flat.

I have considered the submissions and have closely gone through the record.

So far as the question of relationship of landlord and tenant, between the parties is concerned, including the controversy comprehended by issue No.1, in my view, in view of the statements of D.W.1 and 3, the question is required to be decided in favour of the appellant, without going into the findings of the learned trial Court in detail, for the simple reason, that this part of the evidence, rather admissions of the defendant, have not been considered by the learned trial Court. D.W.1 Balabaksh in cross-examination has clearly admitted, by deposing at page 2 of the cross-examination dated 21.1.82, that Girdhardas had the right to assign to the plaintiff, and that the written-statement is signed by Dilip Kumar. D.W.3 Dilip Kumar, who is none-else than the signatory of the written-statement, and son of D.W.1, has clearly deposed in the examination-in-chief itself, that he never denied Girdhardas or Mohan Lal (plaintiff) to be the landlord, nor did he admitted anybody else to be the landlord. Accordingly, the finding of the learned trial Court on issue No.1 is set aside, and it is held, that the lease hold rights of Girdhardas were assigned to the plaintiff by a registered deed, being Ex.2, dated 14.4.75, and the parties are in relationship of landlord and tenant.

Coming to the question of grounds of eviction having been made out, as covered by issue No.6, even after reading the entire evidence of the plaintiff, there is no

escape from the consequence, that there is no evidence on the side of the plaintiff, to show, either that the premises, either whole, or any part thereof has at all been sublet to anybody, or that the defendant has denied the title of the landlord. So far default is concerned, admittedly the defendant has paid the determined amount, and has been regularly depositing the monthly rent, as required by law, and thus, decree for eviction cannot be passed on that ground. Thus, the findings of the learned trial Court on issue No.6, so also issue No.5, are affirmed.

Coming to issue No.7, it is admitted by defendant, D.W.1, that the rent was not paid, and the defendant has not been able to show, the rent for a period of three years next before filing of the suit, to have been paid, either to the plaintiff, or even to the assignor. In that view of the matter, may be that the plaintiff has not produced any account, since it has been admitted by D.W.1, at page-2 of the cross-examination dated 21.1.82, that after 1961 he has neither deposited any rent in the Court, nor has it been remitted by money order, and the remittance that was made through bank was not received by Girdhardas. Even in examination-in-chief, he has only deposed, that he never committed any default in payment of rent, inasmuch as, when Girdhardas refused to receive the rent @ Rs.341/- per month, he tried to make payment through bank, but Girdhardas refused to receive, and bank informed him, that

Girdhardas is refusing to receive. In that view of the matter, it is clear that the plaintiff is entitled to rent for a period of three years, next before filing of the suit. Thus, the finding of the learned trial Court on issue No.7 cannot be sustained, and is required to be, and is, set aside.

Then coming to the crucial issue, covered by issue No.8 and 9, even at the cost of repetition, it may be recapitulated, that according to the learned trial Court, lease for 22 years was created on 4.8.50, which being unregistered, any of the stipulation thereof cannot be looked into. At the same time, the learned trial Court had looked into the stipulation, about monthly rent being about Rs.561/- with a discount of Rs.441/- for the period upto 31st March 1951 or till commencement of the theater, then has referred to the statement of P.W.2, to the effect, that rent @ Rs.150/- per month was paid upto 1.3.51. Thus, it has been concluded, that for the purpose of giving and taking, the rent was agreed at Rs.150/- per month. Then it has been considered, that when Ramanlal did not pay rent after 1.3.51, a suit No.5/57 was filed, wherein after service of only one partner and without service of other partners, a collusive decree was obtained, by collusion between Ramanlal and Girdhardas, on 25.4.57, but nothing was paid. Then the matter was compromised between Girdhardas and Balabaksh, in which process, letter dated

6.8.57, Ex.1, was sent, proposing the tenure of lease to be increased to 26 years, and in that event, he would pay rent from 1.3.51 to 31.7.57, and onwards, @ Rs.341/- per month. This proposal was accepted on 7.8.57. It is significant to note, that while making this recapitulation, or while reading this part of the record, the learned trial Court has not read para-8 of Ex.1, which very much forms integral part of this offer, as the offer made vide Ex.1 was accepted hole-hog, vide Ex.2. The learned trial Court has then proceeded to consider in para-43, that since the documents Ex.1 and 2 are not registered, therefore, the default clause (clause contained in para-8) cannot be looked into, and that vide Ex./P-3, the rent for the period 1.3.51 to 31.7.57 was paid @ Rs.341/-, and that, according to the plaintiff, the rent upto March 1951 has been received @ Rs.341/- per month. In my view, may be, that the document is not registered, but then, in that event, the document should not have been looked into at all, or if looked into, all the admissible portion of the conditions contained therein should have been looked into, i.e. the rate of rent, including the default clause, otherwise, if the default clause is not looked into, the rate of rent should also not have been looked into, in which event, the rate of rent, as agreed in the lease deed dated 4.8.50 comes into force, being Rs.561/- per month. Likewise, it is again a different story, that vide Ex.6, the defendant had clearly tried to wriggle out from Ex.1, by contending, that

his partner being not agreeable, no valid agreement exists, and the proposal made is imperfect, and the landlord cannot claim any rights thereunder. It is a different story, that regarding Ex.1, the defendant has admitted the signatures A to B thereon, and has tried to get out of it on varying grounds, at different places, inasmuch as, while in the witness-box, he has deposed, that he did not read the contents, and does not understood English, therefore, he is not bound by the contents thereof. As against this, in Ex.6, which is a letter addressed in the year 1959, this stand has not been taken, and the stand taken is, that his other partner Nemichand is not agreeable to the proposal, and therefore, the proposal is imperfect, and no rights flow to the plaintiff. At the same time, on the other hand, Ex.3 is there on record whereby the plaintiff has clearly withdrawn the concession given vide Clause-8 of Ex.1, and despite protesting against it vide Ex.6, admittedly the defendant has not taken any steps for getting the fair rent determined from any competent authority, rather has not taken any action whatever, except that the plaintiff has filed the present suit. From Ex.6, it is clear, that Ex.3 was received by the defendant, and having not taken any action, as threatened in Ex.6, the defendant cannot be allowed to get out of the consequences, flowing from the default clause contained in para-8 of Ex.1.

Now I take up the contention about waiver of this

stipulation. A look at Ex.11 shows, that it is dated 10.12.57, and thereby 5 months' rent was received. Clause-8 of Ex.1 reads as under:

> "If at any time, the rent for four months falls into arrear, you will be entitled to withdraw the concession given by you."

Thus, by the time, the rent was paid vide Ex.11, rent for four months had only fallen due, and had not fallen in arrears, rather before they could fall in arrears, the payment was made, and was rightly received, and thereafter, when the rent for the period more than 5 months fell into arrears, the letter Ex.3 was sent, withdrawing the concession. It is not shown on the side of the defendant, in any manner, not even by word of mouth of defendant as D.W.1 or 3, that Girdhardas had ever waived this condition contained in clause-8 of Ex.1.

Thus, considered from any standpoint, the obvious conclusion is, that as on the relevant date, being 1.1.62, the rent of the premises was Rs.561/- per month. True it is, that as on that date, rent at this rate was not paid by the defendant, and the rent last paid was upto March 1958, being @ Rs.341/-, but the relevant part of the language of Section 6, being explanation to sub-section (2) thereof, is " … … … … rent at which the premises were let on the first day of January 1962 … … … …". Thus, the payment or non-

payment of rent is not relevant, what is relevant is, the rent at which the premises were let, which, from the above, has to be concluded to be Rs.561/- per month.

Then coming to the rate of standard rent to be determined, according to Section 6 (2)(b), the rent cannot exceed two and a half times, the basic rent. It is a different story, that evidence has come on record, inasmuch as, P.W.1 has deposed in cross-examination, that some 4-6 months ago, he had talked to the plaintiff, about the adjacent land to be let out, at a monthly rent of Rs.4000/. This statement was recorded on 29.4.78, while the suit had been filed on 28.4.76. Then P.W.2 has also deposed, that in December 1975 Kastoorchand Daga has told him, if he could get adjacent land on rent of Rs.4000-4500/- per month. Significantly, both these witnesses have not been cross-examined on this aspect of the matter at all. Then P.W.7 has deposed, that in the year 1962-63 many people had approached him to let out the adjacent land at a monthly rent of Rs.1500-2000/-, and that in 1976, the land in question could easily fetch a monthly rent of Rs.4000/-. In cross-examination, he has maintained, that in the year 1962-63 Kastoorchand Daga, Shanker Lal Mohta etc. had approached him for the adjacent land. As against this, no evidence has been led on this aspect, on the side of the defendant. Thus, considering the fact, that there is no cross-examination of the above witnesses of the plaintiff,

and even Kastoorchand Daga has withstood the cross-examination, and in view of the fact, that there is no evidence in rebuttal, even if the rent were to be determined on the basis of the then prevalent market rate, still it would have come to around Rs.4000/- per month, as on the date of filing of the suit, while the learned counsel for the appellant had claimed the rent to be determined as two and a half times the basic rent, taking it to be Rs.561/-, while learned counsel for the respondent contended, that the standard rent should be determined at one and a half times, taking the basic rent to be Rs.341/-.

In my view, when the basic rent has been found to be Rs.561/-, in view of the language of Section 6(2)(b), coupled with the evidence led on the side of the plaintiff, two and a half times the basic rent is required to be fixed, to be the standard rent. So far as the provisions of Section 10 are concerned, as relied upon by the learned trial Court, in my view, Section 10 has a different field of operation, and talks about increase/permissible increase in the rent/standard rent, and does not talk about determination of any standard rent. In the present case, the plaintiff's prayer in the suit is, for the determination of standard rent, and not for increase of the rent. In that view of the matter, reliance on Section 10 was wholly misplaced. Thus, a standard rent of the premises is required to be, and is, determined to be Rs.1402.50

Paisa per month, being two and a half times the basic rent.

Then comes the question, as to from what date, the standard rent is to be effective. According to sub-section (5) of Section 6, the Court is to appoint a date, from which the standard rent shall be deemed to have effect, and according to proviso, in case of the tenant instituting the suit for determination, after expiry of six months from the commencement of the tenancy, on the ground of agreed rent being excessive, is to be the date of institution of the suit, or such later date, as the Court, in the circumstances of the case, deems reasonable. Significantly, no provision has been made for cases instituted by the landlord. Then a look at the record shows, that while making determination under Section 13(3), vide order dated 4.8.77, the trial Court has observed, that before evidence is recorded, it cannot be said, that the rent of the premises, looking to the present condition, should be Rs.561/-, or Rs.341/-, per month, and therefore, with consent of the learned counsel for the defendant, determination was made by calculating the arrears @ Rs.500/- per month.

According to the provisions of Section 7(1) of the Act, immediately on filing of the suit, the Court was required, to make an order fixing provisional rent, in a summary manner, but that has not been done. According to

the said provision, such rent remains in force till a decree fixing the standard rent is finally made in such suit, and according to sub-section (5), all amounts paid as provisional rent are to be adjusted towards payment of the standard, rent finally made. Obviously therefore, intention was, that ordinarily, the standard rent should be effective from the date of filing of the suit, otherwise there is no purpose of fixing any provisional rent, which obviously has to be something different from the agreed rent, and as near possible to the likely standard rent. Thus, considering these totality of circumstances, I think it appropriate, to fix, the date of filing of the suit, to be the date from which the standard rent can be deemed to have effect, as contemplated by sub-section (5) of Section 6.

Accordingly, the appeal is partly allowed, the impugned judgment and decree is set aside. The plaintiff's suit is decreed for arrears of rent, for a period of three years, since before the date of filing of the suit, @ Rs.561/-, amounting to Rs.20,196/-. However, from out of this amount, the defendant will be entitled to credit of the amount, if any, paid during pendency of the trial. Likewise, the plaintiff's suit is also decreed for determination of standard rent, and the standard rent of the premises is determined to be Rs.1402.50 Paisa, to be effective from the date of filing of the suit, being 28.4.76, and the plaintiff will accordingly be entitled to

the arrears, for the period, from the date of suit onwards. The suit of the plaintiff for eviction, however, is dismissed. The parties are directed to bear their own costs throughout.

(N P GUPTA),J.

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